

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
PACIFIC NORTHWEST MOTOR FREIGHT
LINES, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 78-144

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

This matter, the appeal of a \$250 civil penalty for the alleged violation of Section 9.15(c) of respondent's Regulation I came before the Pollution Control Hearings Board, Chris Smith and David Akana (presiding), at a formal hearing in Seattle, Washington, on September 21, 1978.

Appellant, Pacific Northwest Motor Freight Lines, Inc., appeared through its President, L. H. Doolittle. Respondent was represented by its attorney, Keith D. McGoffin.

Having heard the testimony, having examined the exhibits, and

DA/DO

1 having considered the contentions of the parties, the Board makes
2 these

3 FINDINGS OF FACT

4 I

5 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
6 a certified copy of its Regulation I and amendments thereto which are
7 noticed.

8 We take notice of our previous decision in an earlier hearing
9 concerning a similar matter between the same parties, PCHB No. 78-96.

10 II

11 Pacific Northwest Motor Freight Lines, Inc., the appellant, operates
12 a truck-trailer storage yard at 600 South Edmunds Street, in the central
13 area of Seattle, Washington. Appellant leases, rather than owns, the
14 land at that location. There is a layer of dirt covering the blacktop
15 in the yard. Because of the physical characteristics of the yard,
16 regular oiling of the dirt is the best means to suppress airborne dust
17 caused by vehicular traffic in the yard.

18 III

19 On March 21, 1978, appellant received a notice of violation for
20 causing or allowing airborne dust from which followed a \$250 civil
21 penalty issued on March 24, 1978. After this citation, appellant
22 attempted to have its yard oiled but could not find a contractor who
23 could do the work promptly. The yard was oiled sometime about May 30,
24 1978 at a cost of \$3,500.

25 IV

26 On May 22, 1978 at 2:00 p.m., respondent's inspector observed
27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 appellant's storage yard and saw dust from the lot becoming airborne
2 from traffic and the wind. For the airborne dust observed, appellant
3 was sent a notice of violation from which followed a \$250 civil
4 penalty and this appeal.

5 IV

6 The regulation alleged to be violated, Section 9.15(c), makes it
7 unlawful to cause or permit untreated open areas located within a
8 private lot or roadway to be maintained without taking reasonable
9 precautions to prevent particulate matter, here dust, from becoming
10 airborne.

11 Section 3.29 provides for a civil penalty of up to \$250 per day
12 for each violation of respondent's regulations.

3 VI

14 Any Conclusion of Law which should be deemed a Finding of Fact
15 is hereby adopted as such.

16 From these Findings the Board comes to these

17 CONCLUSIONS OF LAW

18 I

19 Respondent proved a prima facie violation by showing that airborne
20 dust from a private lot under appellant's control was observed. From
21 that observation, an inference can be made that "reasonable precautions"
22 were not taken by appellant. The burden of going forward with the
23 evidence, at that point, is upon appellant to show that it had taken
24 "reasonable precautions" to prevent dust from becoming airborne.
25 Oiling is an available method to control dust at appellant's site.
3 Appellant attempted to have its yard oiled but could not do so before

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 the instant violation. While waiting, appellant could have taken other
2 measures to control the dust but did not attempt to do so. Appellant
3 therefore violated Section 9.15(c) of respondent's Regulation I on
4 May 22, 1978. Accordingly, the \$250 civil penalty should be affirmed.
5 Because appellant has since treated its open area at a substantial
6 expense, payment of the penalty should be suspended.

7 II

8 Any Finding of Fact which should be deemed a Conclusion of Law
9 is hereby adopted as such.

10 From these Conclusions, the Board enters this

11 ORDER

12 The \$250 civil penalty is affirmed but payment thereof suspended.

13 DATED this 17TH day of October, 1978.

14 POLLUTION CONTROL HEARINGS BOARD

15 
16 CHRIS SMITH, Member

17 
18 DAVID AKANA, Member